Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Complaint for Carriage by	)	CSR-8752-M
Western Pacific Broadcast, LLC	)	Docket No. 12-364
	)	
v.	)	
	)	
Armstrong Utilities, Inc.	)	
	)	
Petition for Modification of Philadelphia, PA	)	CSR-8838-A
Designated Market Area With Regard to	)	Docket No. 13-245
Television Station WACP, Atlantic City, NJ	)	

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 2014 **Released: February 20, 2014**

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Western Pacific Broadcast, LLC, licensee of commercial broadcast television station WACP-DT, Atlantic City, NJ ("WACP") filed a mandatory carriage petition seeking carriage on certain cable systems operated by Armstrong Utilities, Inc. ("Armstrong") in the Philadelphia, Pennsylvania designated market area ("DMA"), pursuant to Sections 76.7 and 76.61(a)(1) of the Commission's rules.[1] Armstrong has opposed WACP's petition on the grounds of poor signal quality,[2] and WACP has filed multiple requests for extensions of time to improve its signal, the majority of which requests have been unopposed. Ultimately, Armstrong filed a separate petition to modify WACP's market to remove the station from the cable communities where the station sought carriage,[3] and WACP combined its opposition to this petition with its reply in the must carry matter.[4] Given their interrelatedness, and for administrative convenience, the Bureau is consolidating these two matters into one proceeding,[5] and we deny the market modification

[1] Complaint of Western Pacific Broadcast, LLC, against Armstrong Utilities, Inc., CSR-8752-M; Docket No. 12-364, filed Dec. 6, 2013 ("WACP Petition").

[2] Opposition of Armstrong Utilities, Inc., filed Jan. 4, 2013 ("Armstrong Opp."); Supplemental Opposition, of Armstrong Utilities, Inc., filed June 28, 2013 ("Armstrong Supp. Opp.").

[3] Petition for Special Relief of Armstrong Utilities, Inc., CSR-8838-A, Docket No. 13-245, filed Sept. 26, 2013 ("Armstrong Petition"). The Pennsylvania communities from which Armstrong seeks to delete WACP are East Nottingham Township (Twp), Elk Twp, Highland Twp, Londonderry Twp, Lower Oxford Twp, Oxford Twp, Upper Oxford Twp, West Fallowfield Twp, and West Nottingham Twp.

[4] Opposition to Petition for Special Relief of WACP, filed Nov. 12, 2013 ("WACP Opp."). Armstrong replied to both sets of pleadings. *See* Reply of Armstrong to Consolidated Opposition, filed Nov. 22, 2013 ("Armstrong Reply").

[5] WACP has sought to combine its response to Armstrong's market modification petition with its reply in the must carry dispute. Motion for Extension of Time of WACP, filed September 30, 2013 at 2-3 (arguing "it makes little sense for Western Pacific to both address Armstrong's signal quality claim in the above-captioned proceeding and (continued....)

petition and conditionally grant the must carry petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act of 1934, as amended (the "Act"), and implementing rules adopted by the Commission, commercial television broadcast stations, such as WACP, are entitled to assert mandatory carriage rights on cable systems located within their market.[6] A station's market for this purpose is its "designated market area," or DMA, as defined by the Nielsen Company.[7] The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station located in the same DMA is not entitled to carriage.[8] A cable operator can show that a station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend or is too distant from that headend.[9] Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a station may provide a cable operator with specialized equipment, at the station's expense, which will improve the station's signal to an acceptable quality at a cable system's principal headend.[10]

3. With respect to Armstrong's market modification claim, under the Act, the Commission may consider requests to modify market areas. Section 614(h)(1)(C) provides that the Commission may:

> with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's market to better effectuate the purposes of this section.[11]

In considering such requests, the 1992 Cable Act provides that:

> the Commission shall afford particular attention to the value of localism by taking into account such factors as
>
> (I) whether the station, or other stations located in the same area, have

(...continued from previous page)
address it once again in an opposition to the Market Modification Petition"). We agree and consolidate these actions.

[6] *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, *Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2975-77 ¶¶ 41-46 (1993) ("*Must Carry Order*"). The Commission has subsequently extended mandatory carriage rights to digital television stations under Section 614(a) of the Act and has amended its rules accordingly. *See Carriage of Digital Television Broadcast Signals First Report and Order*, *See* 16 FCC Rcd 2598, 2606 ¶¶ 15-16, 2610 ¶ 28 (2001) ("*DTV Must Carry Order*"); *see also* 47 C.F.R. §76.64(f)(4).

[7] Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area as determined by The Nielsen Company. 47 C.F.R. § 76.55(e)(2).

[8] *See Must Carry Order*, 8 FCC Rcd at 2990 ¶ 102.

[9] 47 C.F.R. § 76.55(c)(3).

[10] *Must Carry Order*, 8 FCC Rcd at 2991 ¶ 104.

[11] 47 U.S.C. § 534(h)(1)(C).

> been historically carried on the cable system or systems within such community;
>
> (II) whether the television station provides coverage or other local service to such community;
>
> (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
>
> (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.[12]

4. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.[13] In the *Modification Final Report and Order,* the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modifications that requires the following evidence be submitted:

> (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.
>
> (2) Grade B contour maps[14] delineating the station's technical service area[15] and showing the location of the cable system headends and communities in relation to the service areas.

[12] *Id.*

[13] *Must Carry Order,* 8 FCC Rcd 2965, 2977 n.139.

[14] Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

[15] While the Grade B contour defined an analog television station's service area, *see* 47 C.F.R. § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in Section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level – which for VHF stations is 28 dBu. *See* 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station's noise limited service contour as the functional equivalent of an analog station's Grade B contour. *See Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507 ¶ 3, 19554 ¶ 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act,* Report and Order, 20 FCC Rcd 17278, 17292 ¶ 31 (2005). *See also Lenfest Broadcasting, LLC*, 19 FCC Rcd 8970, 8974 ¶ 7 n.27 (2004) ("For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of an analog station's Grade B contour.").

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.,* the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.[16]

5. Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

6. In the *Carriage of Digital Television Broadcast Signals First Report and Order* ("*DTV Must Carry Report and Order*"), the Commission concluded that under Section 614(a) of the Act, digital-only television stations had mandatory carriage rights, and amended its rules to reflect this.[17] The Commission also clarified its framework for analyzing market modifications for digital television stations.[18] It found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, would be applicable to digital television modification petitions.[19] While the Commission presumed the market of a station's digital signal would be coterminous with that station's market area for its prior analog signal, it recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of its former analog television signal.[20] Therefore, in deciding DTV market modifications, the Commission would take changes in signal strength and technical coverage into consideration, on a case-by-case basis.

III. DISCUSSION

A. Mandatory Carriage Issues

7. WACP commenced broadcast operations in June 2012, and on June 6th it sent a letter pursuant to Section 76.64(f)(4) of our rules to Armstrong electing mandatory carriage on the latter's cable

[16] 47 C.F. R. § 76.59(b).

[17] *See* 16 FCC Rcd 2598, 2606 ¶ 15, 2610 ¶ 28 (2001); 47 C.F.R. §76.64(f)(4).

[18] *See* 16 FCC Rcd at 2635-36 ¶¶ 84-85. The Commission affirmed that for digital signal carriage issues, it would continue to rely on the Nielsen Company's market designations, publications, and assignments it used for analog signal carriage issues. *See id.* at 2636 ¶ 85.

[19] *See DTV Must Carry Report and Order*, 16 FCC Rcd at 2636 ¶ 85.

[20] *See id.* In adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to ensure that a station's digital over-the-air coverage area would replicate as closely as possible its former analog coverage area. *See id.* at 2636 ¶ 85 n.254, citing *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 ¶ 29 (1997).

systems serving certain communities in Chester County in the Philadelphia, PA DMA.[21] Specifically, the communities at issue are served by Armstrong's Oxford cable system and contain about 5,400 customers.[22] After no response was received to Armstrong's June 6th carriage election letter, WACP sent the cable operator a carriage demand letter on September 14, 2012.[23] However, Armstrong did not respond to this carriage demand within 30 days as required by Section 76.61(a)(2) of our rules.[24] Although Armstrong asserts it sent an email to WACP on September 21st, this did not qualify as an affirmative denial.[25] Instead, Armstrong denied WACP's carriage demand in its response of November 19, 2013, and attached signal strength studies for support. WACP argued against the consideration of this denial on various grounds.[26] As further detailed below, because the parties engaged in subsequent discussions, installations, and further testing of WACP's signal over several months, we consider the timeliness of Armstrong's response moot and proceed to consider WACP's signal quality issues on their merits.

8. WACP filed its timely must carry complaint on December 6, 2013, to which Armstrong filed an opposition on January 4, 2013. WACP's transmitter in Millville, NJ is approximately 62 miles away from Armstrong's headend and the station's community of license. Atlantic City, WACP's community of license, is 88 miles distant from Armstrong's headend. Armstrong initially argued the sheer distances between its Oxford headend and cable communities and WACP's transmitter and community of license made WACP's carriage on its systems unrealistic.[27] Furthermore, Armstrong submitted studies showing that WACP could not deliver a good quality signal exceeding the -61 dBm threshold to its headend.[28]

9. WACP responded to Armstrong's opposition by seeking several extensions of time to file its reply and Armstrong consented to such requests at least up through July 2013.[29] These requests were

[21] WACP Petition at 2 & Exh. 1, Letter from M. Scott Johnson, et al., counsel for WACP to Mr. Dave Whittmann, Armstrong Utilities, Inc., Jun. 6, 2012 ("WACP election letter").

[22] Armstrong Petition at 3.

[23] WACP Petition 2 & Exh. 3, Letter from M. Scott Johnson, *et al.*, Counsel for WACP to Mr. Dave Whittmann, Armstrong, Sept. 14, 2012 ("WACP carriage demand letter").

[24] WACP Petition 2 & n.4 (citing 47 C.F.R. § 76.61(a)(2)).

[25] Armstrong Opp. at 3 & n.10 (citing Exh. 5, Email from Christopher Cinnamon, counsel for Armstrong, to Scott Johnson, counsel for WACP, dated September 21, 2014). Given Armstrong's September 21st email only stated it was "in the process of evaluating [the carriage demand letter]," we do not consider this a response starting the 60-day deadline for filing WACP's complaint. Accordingly, Armstrong's November response and its purported signal test were not timely.

[26] WACP argued this opposition failed the requirements of 76.61(a)(2) because it was both untimely and did not include a description of Armstrong's signal processing methodology, a block diagram, or any indication of where WACP's signal was measured, among other factors. *See* WACP Petition at 5. In response, Armstrong argues the Bureau should accept its response because it routinely accepts signal strength tests that are presented to a broadcaster after 30 days of receipt of a must carry demand. Armstrong Opp. at 7-8.

[27] *See* Armstrong Opp. at 2 & 3.

[28] *See* Armstrong Opp. at 5. Armstrong argued it utilized the same testing method approved by the Bureau in another proceeding. *See id.* at 7 – 9, citing *Marantha Broad. Co. v. Armstrong Utilities, Inc.*, 21 FCC Rcd 71400 (MB 2006). It asserted that contrary to WACP's assertions, it utilized "sound engineering practices" in testing WACP's signal, including use of the same antenna and placing it in the same location for testing that it generally used to receive other broadcast signals. *See id.* at 9.

[29] Motion for Extension of Time of WACP, filed Jan. 28, 2013 (Second Request for Extension); Motion for Extension of Time of WACP, filed Feb. 12, 2013 (Third Request for Extension); Motion for Extension of Time of WACP, filed Mar. 7, 2013 (Fourth Request for Extension); Motion for Extension of Time of WACP, filed April 5, 2013 (Fifth Request for Extension); Motion for Extension of Time of WACP, filed May 7, 2013 (Sixth Request for Extension); Motion for Extension of Time of WACP, filed June 5, 2013 (Seventh Request for Extension).

frequently based on ongoing discussions between the engineers for both parties concerning improvements to WACP's signal strength as received at Armstrong's headend, and specifically WACP's fifth through seventh requests for extensions were to provide the station sufficient time to install filtering and pre-amplification equipment at Armstrong's headend and to test its signal once that equipment was installed.[30]

10. On June 28, 2013, Armstrong sought leave to submit a supplemental opposition.[31] In this new opposition, Armstrong stated the parties' discussions had culminated in Armstrong's April 17th installation of both a preamplifier and filter at Armstrong's headend.[32] WACP asserts, and Armstrong does not deny, that after installation of the new equipment, measurements conducted on or after April 17th by Armstrong's Vice President of Engineering, Edgar Hassler, and WACP's consulting engineer, Todd Loney, showed that WACP's signal strength exceeded the necessary signal strength threshold of -61 dBm.[33]

11. Armstrong concedes the preamplifier WACP installed at its headend increased the amplitude of the station's over-the-air signal, but Armstrong argues the signal itself continued to suffer from poor picture quality, high packet loss, and a signal to noise ratio lower than other broadcast signals it received – constituting an unacceptable signal for retransmission on its cable system.[34] Armstrong's engineer, Mr. Hassler asserted that after the installation of the new equipment, he monitored WACP's picture quality for 24 hours and found that WACP's picture suffered from horizontal line distortion, picture freezing with loss of audio, tilting, and, nearly complete picture loss.[35]

12. Armstrong conducted two studies, a 48-hour study of WACP's signal and a similar 24-hour signal study of WGTW, Burlington, NJ as a control, and Armstrong concluded the main reason behind WACP's poor picture quality was the extraordinarily high level of packet loss at its receiver.[36] The studies allegedly identified problems with WACP's signal in three areas. First, with respect to measuring "media loss" (the number of lost digital data packets over time), Armstrong found WACP's transmission lost 559,000 packets over 48 hours, or approximately 280,000 packets over 24 hours.[37] In contrast,

[30] Fifth Request for Extension at 2; Sixth Request for Extension at 2; Seventh Request for Extension at 2.

[31] Motion for Leave to File a Supplemental Opposition & Supplemental Opposition of Armstrong Utilities, Inc., filed Jun. 28, 2013 ("Armstrong Supp. Opp.").

[32] Armstrong Supp. Opp. at 5; Armstrong Reply, Exh. 1, Second Supplemental Statement of Edgar Hassler, at 4 Nov. 22, 2013 ("Hassler Second Supp. Stmt.").

[33] WACP asserts the signal strength exceeded the required threshold by 18 dBm, with a signal strength of -43 dBm. WACP Opp. at 10 & n.25, citing Technical Statement of Todd Loney, Exh. B, page 5. WACP asserts Armstrong's engineer did not witness any signal distortions during the parties' joint signal testing on April 17, 2013. *See* WACP Opp. at 12 & n.29, citing Exh. E at 2, Sept. 23, 2013 email from Todd Loney, WACP to Ed Hassler Jr., Armstrong, at 2. However, the email containing this assertion is not an admission by Armstrong that WACP's signal was sufficient on April 17th, it is an email by WACP's own consulting engineer, who also happens to concede in this very email that WACP investigated Armstrong's April 17th signal quality "concerns and found some issues with the transmitter, which was largely the need for replacement of the exciters." *See id*.

[34] Armstrong Supp. Opp. at 5-6 & n.21, citing Exh. 1, Supplemental Engineering Statement and Declaration of Edgar E. Hassler, Jr., at 4 ("Hassler First Supp. Stmt.").

[35] Armstrong Supp. Opp. at 7 & n.27, citing Exh. 1, Hassler First Supp. Stmt. at 4-5 & nn.1-4 (stating that photos attached as Exhibits 1 through 4 to Hassler's First Supp. Stmt. demonstrate WACP's grossly substandard picture quality).

[36] *Id.,* citing Exh. 1, Hassler First Supp. Stmt. at 5-6 (tests were conducted using signal measurement software provided by IneoQuest Technologies, Inc.).

[37] *Id.* at 8 & nn.32-34, citing Hassler First Supp. Stmt. at 7 & Exh. 5, WACP IneoQuest Report, Media Loss at 3 & 6.

WGTW lost only 700 packets in 24 hours – meaning that the packet loss of WACP was 400 times greater than that of WGTW.[38] According to Armstrong, this demonstrated WACP did not deliver the necessary number of digital packets required to consistently display complete and clear digital images.[39] Second, Armstrong measured the number of seconds in each 15 minute period of a day during which measurable packet loss occurred, and it asserted WACP lost packets for three hours of the 48-hour study period, whereas WGTW experienced packet losses only for a total of five seconds in all of the 24 hours it was under study.[40] Armstrong states this extraordinary frequency of packet loss also helps explain WACP's unacceptable picture quality.[41]

13. Third, Armstrong studied WACP's outages and found the station had 21 complete outages over 48 hours, an average of over 10 outages per day, as compared to WTTG's zero outages over a day.[42] Armstrong's engineer believes these outages are the cause of WACP's intermittent picture freezing, complete loss of audio and complete picture loss shown in photographs of WACP's signal.[43] Armstrong also states WACP's signal frequently suffered from a high noise level, causing its signal-to-noise ratio (or S/N ratio) to be lower or substantially lower at times than WGTW's.[44] An engineering report attached to Armstrong's market modification petition also noted that WACP's signal appeared severely impaired by upper adjacent channel interference caused by land-mobile signals operating near the upper edge of the station's signal at 72.06 MHz.[45] As a result, Armstrong's engineering experts noted that even if WACP met the -61 dBm signal strength threshold for carriage, the upper adjacent channel interference it received could not be filtered out or mitigated and would degrade the quality of WACP's signal as amplified at Armstrong's headend, leaving a sufficiently strong, but suboptimal signal.[46] In conclusion, Armstrong argued that while most signal quality disputes before the Bureau had involved whether a station met the quantitative signal threshold, and few involved the qualitative aspect of a signal, as in this case, there is precedent supporting the rejection of WACP's carriage demand on the grounds of poor picture quality.[47]

14. After the filing of Armstrong's supplemental opposition, WACP sought three more extensions of time.[48] Its eighth and ninth such requests, it sought until September 30, 2013 to file a reply, after it had had a chance to replace certain exciters/modulators in its transmitter, and it argued these new

[38] *Id.*, citing Hassler First Supp. Stmt. at 7 & Exh. 6, WGTW IneoQuest Report, Media Loss at 3.

[39] *Id.* at 8 & n.34, citing Hassler First Supp. Stmt. at 7-8 (stating that such packet loss results in distortion, tilting and periodic complete signal loss).

[40] *Id.* at 9 & nn.35-36, citing Hassler First Supp. Stmt. at 8-9 & Exh. 5, WACP IneoQuest Report, Media Loss Secs at 4 & 7, and Exh. 6, WGTW IneoQuest Report, Media Loss Secs at 4).

[41] *Id.* at 9 & n.37, citing Hassler First Supp. Stmt. at 9.

[42] *Id.* at 9 & nn.38-39 & 41, citing Hassler First Supp. Stmt. at 9-10 & Exh. 5, WACP IneoQuest Report, Outage Events at 5 & 8, and Exh. 6, WGTW IneoQuest Report, Outage Events at 5.

[43] *Id.* at 9 & n.40, citing Hassler First Supp. Stmt. at 10 & Exhs 2 & 4 (stating that such outages are responsible for the picture freezing and complete loss of audio shown in Exhibit 2 and the complete loss of picture shown in Exhibit 4 to the Supplemental Engineering Statement).

[44] *Id.* at 10 & nn. 43-44, citing Hassler First Supp. Stmt. at 10-11 & Exh. 5, WACP IneoQuest Report, Signal to Noise Ratio at 5 & 8, and Exh. 6, WGTW IneoQuest Report, Signal to Noise Ratio at 5.

[45] Armstrong Petition at Exh. 4, Meintel, Sgrignoli & Wallace, Evaluation of WACP DTV Channel 4 Service Contour and Signal Issues, Oxford PA, Aug. 28, 2013, at 12-13 ("MSW Report")).

[46] *See id*. at 13.

[47] Armstrong Supp. Opp. at 11, citing *WRNN-TV v. Cablevision Systems Corp.*, 13 FCC Rcd 12654 (CSB 1998).

[48] Motion for Extension of Time of WACP, filed July 8, 2013 (Eighth Request for Extension); Motion for Extension of Time of WACP, filed Aug. 30, 2013 (Ninth Request for Extension).

installations – in conjunction with the filter/pre-amplifier it had already installed at Armstrong's headend, would finally improve its signal quality to a degree that the carriage dispute between the parties could be resolved.[49] Armstrong opposed WACP's ninth extension.[50] In response, WACP argued in favor of its extension on the grounds that it was expecting to take signal measurements at Armstrong's facilities after it had installed its exciters, and that such tests would conclusively show that it could deliver a good quality signal and resolve their dispute over carriage, and it intended to request dates agreeable to Armstrong for conducting further signal testing at the latter's headend.[51]

15. Upon completing installation of the exciters, WACP filed a combined opposition/reply in which it made multiple arguments disputing Armstrong's earlier signal studies. WACP asserted that since its installations, it had not observed the distortions in its signal previously described by Armstrong in its Supplemental Opposition, and WACP's engineer, Mr. Loney estimated WACP's S/N ratio must have improved since these installations.[52] Mr. Loney stated he had contacted Armstrong to conduct further joint signal tests after the installations; however, WACP had not been afforded the opportunity of running such tests at Armstrong's facilities.[53] WACP stated Armstrong had initially required all communication between engineers to be in writing and then, more recently, it had cut off contact.[54] Indeed, by an email dated September 27, 2013, Armstrong's engineer, Ed Hassler stated he had been advised that "[they] should defer further testing until the FCC made a decision on the market modification."[55] WACP also noted in its opposition that any purported interference Armstrong had identified from two land-mobile stations near the Oxford headend could be overcome because such stations are authorized to operate on a secondary non-interference basis and could not cause interference to a television station operating on channel 4 such as WACP.[56]

16. In its Reply, Armstrong attached a Second Supplemental Engineering Statement by its Vice President of engineering, Mr. Hassler, which described the results of his latest studies of WACP's signal conducted as of November 17th, 2013 and after the installation of WACP's exciters; the statement concluded WACP's latest installations have "made no difference."[57] Armstrong asserted it had conducted a 24-hour study of WACP's signal between November 17th and 18th, and a comparator station, WPVI, and it had found that for four hours of the testing, WACP suffered from "total media loss," resulting in no video or a frozen screen as well as audio disturbances, and the signal exhibited uncorrected digital stream

[49] Eighth Request for Extension at 2; Ninth Request for Extension at 2.

[50] *See* Armstrong Opposition to WACP's Ninth Motion for Extension Time, filed Sept. 9, 2013.

[51] WACP Initial Reply to Opposition to Extension of Time, at 2, filed Sept. 13, 2013.

[52] WACP Opp. at 12 & n.30, citing Exh. B, Technical Statement of Todd Loney, at 6, Nov. 12, 2013 (stating that once installation of the exciter was complete, the transmitted signal had improved, and WACP had not seen any issues with the signal since this upgrade; however, when Mr. Loney contacted Armstrong's Mr. Hassler to revisit the headend to again measure the signal, his request was denied).

[53] *See id.*

[54] WACP Opp. at 13 & nn.32-33, citing Exh. E, at 18, Jan. 11, 2013 email from Ed Hassler, Armstrong to Todd Loney, WACP; and Exh. E at 1, Email from Ed Hassler, Armstrong to Todd Loney, WACP, dated Sep. 27, 2013.

[55] *See id.*, WACP Opp. at Exh. E at 1, Email from Ed Hassler, Armstrong to Todd Loney, WACP, dated Sep. 27, 2013.

[56] *Id.* at 14 & n.34, citing Exh. A, Technical Report of Lohnes & Culver, dated Nov. 11, 2013 (LC Report).

[57] Armstrong Reply at 8 & n.17, citing the Second Supplemental Statement of Ed Hassler, Jr., at 2, dated Nov. 2013 ("Second Supp. Stmt."). This Second Supplemental Statement contains 27 screen shots of WACP taken on November 18th, 2013 and a digital signal analysis report based on a 24-hour evaluation conducted on November 17th. *Id.* at 8 & n.18, citing Second Supp. Statement, Exh's 1-5.

errors for another three hours, whereas WPVI showed no detectable impairment over 24 hours.[58] Armstrong also asserted WACP's picture quality continued to be grossly substandard due to distance, terrain, and interference, and that a high level of packet loss was resulting in poor signal quality.[59] Armstrong also attached a second report from Meintel, Sgrignoli & Wallace, which also concluded that even with an improved S/N ratio, WACP's signal would fail to overcome certain "non-linear distortions" such as issues with impulsive noise,[60] adjacent channel land-mobile signals,[61] and other impairments.[62]

17. As the Bureau stated in *WRNN v. Cablevision*, "the Commission does not have picture quality standards for broadcast must-carry stations other than its signal strength requirements," and "the presumption is that satisfaction of the Commission's signal strength requirements will produce a good quality signal."[63] However, the Bureau recognizes that signal strength is "only one element of a picture quality determination."[64] Accordingly, the Bureau generally treats a station's ability to meet the -61 dBm signal strength threshold at a cable system's headend as meeting a *prima facie* test, after which, if it chooses to do so, a cable operator bears the burden of proving through the submission of empirical and verifiable evidence that, "nothwithstanding the presence of a signal of adequate strength, defects remain that render reception unacceptable in quality."[65] In *WRNN*, the Bureau held that when a station's "signal to noise ratio" fell below a certain level, that showing taken in conjunction with an evaluation of poor picture quality provided by an independent state agency, provided persuasive evidence that the station did not deliver a good quality signal to the cable system headend.[66] The Bureau was less generous in accepting the station's videotape evidence as proof that it provided a signal of good quality because it found the tape to have been made without the involvement of a neutral third party and the conditions of its production had not been adequately detailed, including whether the images shown were typical or

[58] Armstrong Reply, Exh. 1, Second Supp. Stmt, at 8.

[59] *Id.* at 8-9 & n.19, citing Second Supp. Stmt at 8.

[60] Armstrong argues reception of the Low-VHF channels requires a much higher signal level to overcome impulse and electrical noise, as the "noise floor" in the Low-VHF band is problematic in DTV transmission. Armstrong Reply, Exh. 2, Meintel, Sgrignoli & Wallace, Engineering Statement and Report at 9, Nov. 21, 2013 (Second MSW Report). These noise issues, Armstrong argues, in combination with the others discussed, makes the western edge of WACP's predicted noise limited signal contour ("NLSC") an unreliable predictor of good quality reception. *Id.*, Exh. 2, Second MSW Report at 9.

[61] The Second MSW Report stated that since the Armstrong headend lies outside WACP's NSLC, it would not be protected from interference to the WACP signal – as such protection is only afforded within the station's countour, and given the magnitude of the interference itself, these adjacent channel land-mobile operators would need to be moved to a different location, which could take months or years. Armstrong Reply, Second MSW Report at 8. Until such time, the interference these services create would merely be amplified by WACP's installed preamplifier. *See id.* at 7.

[62] *Id.* at 9 & n.20, Second MSW Report.

[63] *WRNN v. Cablevision*, 13 FCC Rcd at 12661 ¶ 15.

[64] *Id.*

[65] *See Kralowec Children's Family Trust v. Time Warner Cable, Porterville, CA,* 11 FCC Rcd 8591, 8595 ¶ 9 (CSB 1996).

[66] *WRNN*, 13 FCC Rcd at 12662 ¶ 18. The Bureau noted that WRNN's S/N ratio of 41.5 dBm was below the relevant standards published in the National Cable and Telecommunications Association's "Recommended Practices" which indicated that a station's S/N ration should be greater than or equal to 53 dBm. *See id.* at 12662 ¶ 17. The cable operator, Cablevision, also provided a letter and report sent to it by the New York State Public Service Commission, which found that WRNN's "signal and [the] picture quality of the received signal is very poor." *See id.,* 13 FCC Rcd at 12660 ¶ 12.

atypical.[67]

18. Here, although WACP's signal strength and S/N ratio were both first found subpar by Armstrong, WACP endeavored to improve these values through various installations, and Armstrong no longer disputes that these initial values have improved. Instead, Armstrong supplies screenshots of WACP's picture quality and identifies what it terms (i) horizontal line distortion; (ii) picture freezing with loss of audio; (iii) tilting; and, (iv) nearly complete picture loss.[68] Such photographic studies occupy the same space as the video recordings in *WRNN* in that they were not observed by an independent third party or conducted jointly by both parties and are thus difficult to verify. Armstrong submitted data in June in the form of technical reports prepared through use of IneoQuest software which it asserted showed WACP had a poor quality signal even after installation of its preamplifier and filter. Armstrong also supplied new such studies in its Reply, arguing that even after the installation of exciters, WACP's signal continued to suffer from total media loss for several hours a day and was grossly substandard due to distance, terrain, interference, and a high level of packet loss was resulting in poor signal quality.[69] Given the evidence Armstrong has amassed, we cannot order WACP to be carried in its current state; however, because we have been informed that Armstrong has restricted the communication between its engineers and those of WACP to email and has, most recently, even refused to conduct joint signal tests with WACP since the latter's installation of its latest equipment, we decline to deny carriage of WACP's signal, particularly since WACP continues to assert its right to use alternate means of delivering its signal at its own expense.[70] Accordingly, the parties must work together and jointly test WACP's signal in its current state. Afterwards, they should submit a joint report containing signal strength studies, photographs of the station's picture quality, and other evidence, if necessary, which both sides have observed and to which observations both sides attest. If, as a result of such tests, WACP's signal is found to be of acceptable quality, Armstrong shall commence carrying the station. However, if WACP supplies only a signal of poor quality, WACP will not be granted carriage.[71] Until WACP delivers a good quality signal jointly acceptable to the parties, we cannot grant its mandatory carriage demand, and Armstrong is under no compulsion to carry WACP unless it improves its signal to the satisfaction of the parties.

C. Market Modification Analysis

19. As discussed above, Armstrong has also filed to exclude WACP from the Chester County communities at issue on the grounds that these communities are outside the station's market. Based upon the four nonexclusive statutory factors we explicitly consider in our market modification analysis, we deny this request.[72] The first statutory factor concerns whether WACP, or other stations licensed to its community, have been historically carried on Armstrong's cable system.[73] According to Armstrong, WACP fails this factor because it has never been carried on its system serving the communities, and

[67] *See id.* at 12663 ¶ 19.

[68] Armstrong Supp. Opp. at 7 & n.27, citing Exh. 1, Hassler First Supp. Stmt. at 4-5 & nn.1-4, Photo Exhs A-K; *see also* Armstrong Reply, Exh. 1, Second Supp. Stmt. at 5 & nn.3-6, Photo Exhs A-AA.

[69] Armstrong's second set of engineering reports by Meintel, Sgrignoli & Wallace found in November 2013 that even with an improved S/N ratio, WACP's signal would fail to overcome certain "non-linear distortions" such as issues with impulsive noise, adjacent channel land-mobile signals, and other impairments.

[70] WACP Opp. at 13.

[71] Of course WACP will still retain the right to pay for and provide an alternate method of signal delivery such as fiber.

[72] *See supra* ¶ 2.

[73] This statutory factor is typically evidenced by "cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings." 47 C.F.R. § 76.59(b)(6).

neither have the other two Atlantic City stations in the market – WMCN and WWSI.[74] WACP responds it is essentially a "new" station since it only commenced operations in June of 2012, and stations on the air less than 3 years are considered new stations.[75] It is true that with new stations, failure to establish either historic carriage or significant viewership is given lesser weight, and we typically rely more on a station's Grade B contour to delineate its market.[76] However, the historic carriage and significant viewership factors are not entirely discounted for new stations, nor are such stations exempt from the market modification process.[77] In this regard, for example, it is relevant if a station is carried in the communities at issue by competing providers, or if it is carried in adjacent communities, and WACP provides evidence of its carriage in at least three of the communities at issue,[78] and in other cases, in surrounding or proximate communities.[79] WACP is carried by Verizon or Comcast in Highland, Londonderry and Upper Oxford.[80] Furthermore, WACP asserts that of the 73 communities in Chester County[81] Armstrong is the cable operator serving only the 9 communities at issue, but the remaining communities are served by Verizon and/or Comcast and WACP is carried in all such communities.[82] We have confirmed that

[74] Armstrong Petition at 11 & nn.33, 37, citing Exh. 1, Decl. of Edgar E. Hassler, Jr., at 3 ("Hassler Decl."); Exh. 8, Oxford System channel lineup; *see also* Armstrong Reply at 2. *See* FCC's TV Query page, http://www.fcc.gov/encyclopedia/tv-query-broadcast-station-search (type "Atlantic City" into the city field and choose "Digital Television (DT)" from the service field to search and receive list of full power television stations licensed to Atlantic City)(last visited Feb. 18, 2014).

[75] WACP Opp. at 3, citing *Avenue Cable TV Service, Inc.*, 16 FCC Rcd 16436, 16445 ¶ 22 (MB 2001).

[76] WACP Opposition at 3 & nn.3-4. Without accommodating new or 'specialty stations' in our analysis of historic carriage, "weaker or newer stations that cable systems had previously declined to carry, [would be prevented] from ever being carried." *In re Time Warner Entm't – Advance Newhouse P'ship*, 22 FCC Rcd 13642, 13649 ¶ 14 & n.63 (MB 2007), citing *In re Paragon Cable Torrance, et. al*, 10 FCC Rcd 9462, 9466, ¶ 12 (CSB 1995); *see also In re Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12267 ¶ 10 & 12271 ¶ 17 (1997) ("[G]rade B contour coverage, in the absence of other determinative market facts … is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular television station's signal."); *see also In re WRNN License Co., LLC*, 21 FCC Rcd at 5959 ¶ 14 & n.49 (MB 2006). However, signal coverage does not in and of itself necessarily entitle a specialty station to carriage. *See KTNC Licensee, LLC*, 18 FCC Rcd 16269, 16278 ¶ 17 (MB 2003).

[77] Lack of historic carriage and dearth of audience shares is of evidential significance when linked with other information regarding the market, including lack of Grade B coverage, geographic distance, and the absence of noncable audience share in relevant communities. *WMBC v. Cablevision of Monmouth, Inc.*, 11 FCC Rcd 9314, 9322-23 ¶ 19 (CSB 1996).

[78] WACP Opp. at 5-8. Historic carriage of the station by other overlapping cable systems in the communities at issue is a strong indicator we are meant to consider under the statute. *See* 47 U.S.C. § 534(h)(1)(C)(ii)(I). For example, the Commission has previously found overlapping carriage by Verizon's FiOS system to lend support to the historic carriage factor. *See WRNN v. Cablevision Sys. Corp.*, 22 FCC Rcd 21054, 21056 ¶ 4 & n.15 (2007).

[79] WACP Opp. at 5-6. While carriage on nearby cable systems is not a factor specified in the statute, such carriage does serve to demonstrate the belief of both stations and cable systems involved that there is a market nexus between the broadcast station and the communities where the station is carried and it thus provides evidence as to the scope of a station's market. *See Paxson Atlanta License, Inc.,* 13 FCC Rcd 20087, 20100 ¶ 35 (CSB 1998).

[80] WACP Opp. at 7 & nn. 19-20 (stating that Verizon carries the station in Highland, Londonderry and Upper Oxford, whereas Comcast carries the station in Upper Oxford).

[81] WACP Opp. at 6 & n.13; *see also* Pennsylvania Political Subdivision Map, ftp://ftp.dot.state.pa.us/public/pdf/BPR_pdf_files/MAPS/statewide/TYPE15.pdf (last visited Feb. 3, 2014).

[82] WACP Opp. at 6 & n.16, citing Exh. C, Xfinity and FiOS station lineup lists; *see also* Commission's Cable Operations and Licensing System, COALS, https://apps.fcc.gov/coals/forms/search/cableSearchNf.cfm (last visited Feb. 3, 2014) (enter "Chester" in County filed and "Pennsylvania" in State" field and the press Execute for a list of cable operators and their physical systems serving the communities in the county). The evidence does show that

(continued....)

Verizon FiOS and Comcast cable systems serving adjacent communities such as Atglen, New Marlborough, New London, and Penn appear to carry WACP as part of their channel lineups.[83] Accordingly, we will consider WACP's carriage on competing systems in, and proximate to the communities at issue as favorable to retaining the subject communities in its market.

20. The second statutory factor asks "whether the television station provides coverage or other local service to such community."[84] Armstrong explains that the communities at issue, served by its Oxford cable system, are located at the far western corner of the Philadelphia DMA in Chester County, and its Oxford system headend is located about 62 miles from WACP's transmitter and 88 miles from the station's city of license, Atlantic City.[85] As a result, Armstrong asserts this station fails to place a reliable signal over its communities.[86] Armstrong points out that in a recent matter involving WACP, the Bureau expressly relied on a station's Grade B contour to exclude 62 communities from WACP's market, and it argues the same considerations should control here.[87] Armstrong has supplied the reports of the engineering firm, Meintel, Sgrignoli & Wallace which have analyzed the antenna parameters for WACP's brand of antenna. MSW initially conceded WACP is licensed with an omni-directional antenna; however, it reported that the antenna model WACP actually uses is not completely omni-directional but has an azimuthal pattern with several deep nulls, one in particular in the direction of Armstrong's Oxford headend, and that as a result, the station's 28 dBμ contour falls well short of the Oxford, PA headend and all of the communities at issue.[88]

21. In its opposition WACP relied on the engineering report of Lohnes & Culver (LC Report) for support and contested Armstrong's engineering conclusion that its antenna pattern should be calculated as if it were using a directional antenna. WACP argued MSW's calculation of the azimuth pattern for the wrong type of antenna led to the incorrect conclusion that WACP's noise-limited contour fell short of the Armstrong communities by 7 kilometers.[89] Furthermore, WACP's engineering consultant argued that

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Comcast serves such adjacent communities as Franklin, New London, Penn, London Grove, East Fallowfield, Sadsbury, West Sadsbury, Parkesburg, and Atglen; while Verizon FiOS is listed as serving West Marlborough.

[83] *See* Xfinity TV Channel Lineup, http://www.comcast.com/customers/clu/channellineup.ashx (last visited Feb. 3, 2014)(entering zip codes, such as 19310, 19352 and 19390, and addresses for adjacent communities to verify the channel lineups offered showed that WACP was carried).

[84] 47 U.S.C. § 534(h)(1)(C)(ii)(II).

[85] Armstrong Petition at 3 (noting that the closest of the communities to Atlantic City is 81 miles away); *see also* Armstrong Reply at 2.

[86] Armstrong Petition at 7-8; *see also* Armstrong Reply at 2.

[87] *Id.* at 7 & n.17, citing *Western Pacific Broadcast, LLC v. Service Electric Cable Television, Inc.,* 28 FCC Rcd 10804 (MB 2013).

[88] *Id.* at 7-8 & nn.18-19, citing Exh. 4, MSW Report at 3 & Exh. 5, WACP Service Contour ("MSW Report"). The MSW Report states it sought to develop an accurate noise limited service contour to determine whether WACP covered Armstrong's Oxford headend and cable system service area. *See id.* at 2. The service area of a DTV station is the geographic area within its NSLC where its signal strength is predicted to exceed the noise limited service level, which for VHF stations that operate on Channels 2 through 6 (and WACP operates on channel 4), is set at 28 dBμ. *See* 47 C.F.R. § 73.622(e).

[89] *See* WACP Opp. at 4 & nn. 5 & 7, citing Exh. A, LC Report at 2. WACP argues Armstrong reaches the conclusion it does because it relies on an azimuth pattern that does not exhibit the same characteristics as WACP's actual antenna – a Jampro Model JHD-LV2-3/3 (18) SR. *Id.*, Exh. A, LC Report at 2 & Fig. 3 (attaching the antenna manufacturer's theoretical calculated pattern for WACP's antenna). WACP's engineer asserted Armstrong had understated the scope of its NLSC by 7 kilometers and that with the proper calculations the Oxford headend was, in fact, within the station's contour and that the station's Longley-Rice predicted signal strength, which (continued....)

whether WACP's coverage is based upon the nondirectional radiation pattern in its license, or by correctly calculating an actual azimuth pattern, the variation in the respective contours is *de minimis*.[90]

22. Armstrong's reply offered a second report from MSW, which re-calculated WACP's noise limited service contour ("NLSC") using the correct antenna name provided by WACP.[91] MSW conceded that taking the necessary recalculations into account, and using the parameters for the actual antenna used by WACP, "the extent of the contour in the direction of the Armstrong receive site is closer than in [its] previous plot."[92] Nevertheless, the Second MSW Report still concluded that "Armstrong's headend and much of its service area are still outside the predicted contour."[93] We disagree and find that the new predicted contour for the specific antenna used by WACP, as re-calculated by MSW in its Second Report, covers a substantial portion of the communities, even if it does not reach Armstrong's headend.[94] Furthermore, WACP's license lists the station as using a non-directional antenna,[95] and the NLSC contour associated with such a non-directional antenna is also predicted to cover a substantial portion of the communities.[96] Accordingly, we conclude that WACP sufficiently covers the communities with the functional equivalent of a Grade B signal, and this factor weighs in favor of not deleting the communities from its market.

23. Next, Armstrong argues WACP fails to air programming having a distinct nexus to the communities and that its programs are predominantly infomercials.[97] WACP responds that programming considerations should be irrelevant when considering a new station.[98] We disagree that a station's programming cannot be considered as part of this analysis, and it could be especially relevant in favor of a new station's claims if that new station were to demonstrate that it expended time covering the news and information needs of the communities it sought to serve; however, given WACP's lack of showing under this factor, we concentrate more on the scope of its over-the-air signal.

24. Armstrong argues the third statutory factor weighs heavily in favor of its case here – i.e., "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such

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"exceeded the noise limited service level," reached the communities and Armstrong's headend. *Id.* at Exh. A, LC Report at 2-4.

[90] *Id.*, Exh. A, LC Report at 3 & Exh's 5 & 6. WACP's engineer also argues the MSW Report miscalculated the station's field strength at the Oxford headend location by relying on the wrong azimuth pattern and understating Armstrong's effective radiated power. *Id.*, Exh. A, LC Report at 3.

[91] Armstrong Reply, Exh. 2, Engineering Statement & Report of MSW, at 3-4, Nov. 21, 2013 ("Second MSW Report").

[92] Armstrong Reply, Exh. 2, Second MSW Report at 4.

[93] *See* Armstrong Reply, Exh. 2, Second MSW Report at 4, Figure 1.

[94] *See id.*

[95] WACP-DT Authorization, License No : BLCDT-20120621ABY, July 9, 2012, *available at* http://licensing.fcc.gov/prod/cdbs/pubacc/Auth_Files/1503217.pdf.

[96] WACP Opposition at Exh. A, LC Report, Figure 1, WACP NSLC and Armstrong Community Map, & Figure 6, WACP 28 dBμ NSLC and Armstrong Community Map (close-up); *see also* WACP's Service Contour as plotted on a Google Map. (go to TV Query Results page for WACP and scross down to "Maps", and select "Service Contour on Google Map" *See* http://transition.fcc.gov/fcc-bin/tvq?list=0&facid=189358 (last visited Feb. 12, 2014).

[97] Armstrong Pet. at 10; *see* also Armstrong Reply at 2.

[98] WACP Opp. at 8.

community or provides carriage or coverage of sporting and other events of interest to the community."[99] Armstrong argues the DMA contains at least 5 other Philadelphia stations its system carries that provide coverage of local news, sports and other events of interest, including KYW (CBS), WPVI (ABC), WCAU (NBC), WHYY (PBS), WTXF (Fox), and WPSG (CW) – all from Philadelphia.[100] We acknowledge Armstrong's point, but note the Bureau has previously stated that local coverage by other stations is given little weight within the Grade B contour of the station subject to the market modification.[101]

25. Finally, the fourth and final statutory factor we consider concerns "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."[102] Armstrong argues WACP likely has no share in the communities,[103] and WACP does not contest this fact, albeit, as a new station, viewership values do not carry the same weight in the analysis.

26. As noted by Armstrong, the Commission recognizes the importance of certain evidence in addition to the statutory factors, particularly several non-enumerated economic factors.[104] Armstrong notes the lack of a direct traffic corridor between its communities and Atlantic City, the extensive distance between the two, the lack of commuting for work from the communities at issue to Atlantic City, and the fact that these two areas are assigned to different Metropolitan Statistical Areas.[105]

27. In this matter, WACP has no history of carriage on Armstrong's cable system in the communities at issue, provides no programming oriented toward them, and obtains no audience viewership values therein. However, WACP is a new station and its viewership and historical carriage carry lesser weight in our analysis. In a case such as this, to define the current limit of WACP's market, we typically rely on a station's service area in conjunction with other factors, and given that WACP apparently provides no programming targeted to the communities at issue, we rely on the limit of its Grade B contour taken together with its carriage by competing providers in the communities at issue and its carriage on proximate systems. Because WACP is a new station, these factors weigh against granting Armstrong's request to modify WACP's market to remove the communities at issue. However, while we leave the communities at issue as part of WACP's market, we will not enforce WACP's mandatory carriage rights with respect to Armstrong's cable systems served from its Oxford headend until we receive a report jointly submitted by the parties that attests to the fact that WACP can deliver a good

[99] Armstrong Pet. at 11 & n.38 (citing 47 U.S.C. § 534(h)(1)(C)(ii)(III)).

[100] *See* Armstrong Petition at 12.

[101] *See Mediaone of Mass., Inc.*, 13 FCC Rcd 3017, 3025 ¶ 21 (CSB 1998).

[102] *See* 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

[103] Armstrong Petition at 12; *see also* Armstrong Reply at 2.

[104] Armstrong Petition at 14-15

[105] Atlantic City is listed as a principal city in the Atlantic City-Hammonton, NJ Metropolitan Statistical Area (MSA), whereas the instant communities, all within Chester County, PA, are part of the Philadelphia-Camden-Wilmington, PA-JN-DE-MD MSA. Armstrong Petition at 14-15 & nn.52-53, (citing Office of Management and Budget, OMB Bulletin 10-02, Dec. 1, 2009, at 25 & 44, available at http://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf). Armstrong also provides statistics it asserts show that only 0.09% of the Chester county population commutes to Atlantic City, and nearly 69% of Chester County employees work in their home county. *Id.* at 15-16 & nn.55-57 (citing Pennsylvania Dept. of Labor & Industry, Historical Data Analysis, https://paworkstats.geosolinc.com/vosnet/lmi/faq.aspx, (navigate to Historical Data Analysis, Employment and Wage Data, Labor Force Data, Census Bureau Commuting Patterns, Chester County, 2000 data) (indicating that of the 80,340 recorded commuters from Chester County, PA (where the Communities are located) only 2,393 commuted to New Jersey, and of those, only 73 commuted to Atlantic County (where Atlantic City is located) (last visited Feb. 2, 2014); *see also* US Census Bureau, Decennial Commuting Patterns, Chester Cty, PA, http://www.census.gov/population/www/cen2000/commuting/files/2KWRKCO_PA.xls

quality signal with a picture of sufficient quality to Armstrong's system.

28. Accordingly, we will order the parties to submit a joint, objective signal test to us within 60 days which describes both WACP's signal strength and signal and picture quality, and which is attested to by both sides. If Armstrong observes that WACP's picture quality continues to exhibit the fragmentation it alleges, it must show this phenomena to WACP's chosen representative who must record it and attest to the fact that the parties observed these phenomena together and the frequency with which they occur. Similarly, the two sides must agree on the signal level that is measured at Armstrong's headend. The result of such tests must be submitted to the Media Bureau. If the values discovered through testing show a signal sufficient for carriage, Armstrong must make arrangements to carry WACP within 30 days of such tests. If these values are insufficient, Armstrong is not required to carry the station.[106]

IV. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED**, that pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h), and Section 76.59, of the Commission's rules, 47 C.F.R. § 76.59, the Petition for Special Relief filed on behalf of Armstrong Utilities, Inc. (CSR-8838-A, Docket No. 13-245) **IS DENIED**;

30. **IT IS FURTHER ORDERED** that the must carry complaint filed by Western Pacific Broadcast, LLC (CSR-8752-M, Docket No. 12-364) **IS CONDITIONALLY GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, 47 U.S.C. § 534. The parties are ordered to conduct a joint signal test of WACP's signal strength and signal and picture quality and to submit a report of such test to the Media Bureau within sixty (60) days from the release date of this order. If such tests show that WACP's signal is capable of being carried such that it demonstrates both adequate strength (a signal consistently meeting the -61 dBm threshhold) and quality (a picture quality which exhibits no more than *de minimis* fragmentation, artifacts or other disturbance), Armstrong Utilities **IS ORDERED** to commence carriage of WACP on its Oxford, Pennsylvania cable system sixty within 30 days of such test results. Otherwise, if such test finds WACP's signal to be insufficient for carriage, Armstrong Utilities **WILL NOT BE ORDERED** to commence carriage of WACP on its cable system.

31. This action is taken under authority delegated by Section 0.283 of the Commission's rules.[107]

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division
Media Bureau

[106] As discussed above, WACP is also free to deliver a good quality signal to Armstrong's headend by any other means, such as delivery by fiber optic cable, provided that WACP assumes all of the costs of alternate delivery.

[107] 47 C.F.R § 0.283.